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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

LEEDS MATTRESS STORES,
INC., et al.,

Plaintiffs and Appellants,

v.

HANMI BANK,

Defendant and Respondent.

B294238

Los Angeles County
Super. Ct. No. BC685311

APPEAL from a judgment of the Superior Court of Los Angeles County, Patricia D. Nieto, Judge. Affirmed.

Neil Leeds, in pro. per., for Plaintiff and Appellant.

LimNexus, Lisa Y. Yang, Mark T. Hansen, and Alexander Su for Defendant and Respondent.

INTRODUCTION

Neil Leeds (Leeds) appeals from a judgment of dismissal after the trial court sustained without leave to amend Hanmi Bank's (Hanmi) demurrer to the second amended complaint. Leeds and Leeds Mattress Stores, Inc. (LMS) sued Hanmi for failing to provide LMS with a promised increase in its line of credit, causing LMS to fail and Leeds to file for bankruptcy. The operative pleading asserts claims for violation of the Unruh Civil Rights Act (Civ. Code, §§ 51, 51.5) (Unruh Act) and unfair business practices (Bus. & Prof. Code, § 17200 et seq.). Leeds alleges that Hanmi never followed through on its promise because it favored Korean customers and customers of Korean descent over non-Koreans like Leeds. The court sustained the demurrer to both causes of action because the Unruh Act claim was, among other things, time-barred and the unfair business practices claim was derivative of the Unruh Act claim. We affirm.

BACKGROUND

Leeds and LMS filed this action against Hanmi on November 30, 2017. Leeds was an officer, owner, and shareholder of LMS. In 2008, LMS and Leeds had a \$1,000,000 line of credit with Hanmi and the bank promised to support LMS's expansion by increasing its line of credit. As of September 2008, Hanmi was in the process of restructuring the line of credit to accommodate LMS's business growth. When the time came to increase the line of credit, however, Hanmi did not keep its promise.

The operative second amended complaint, filed in June 2018, asserts two causes of action. The first cause of action alleges Hanmi violated the Unruh Act by failing to offer LMS the same services and accommodations—increases in lines of credit—

that the bank offered its less credit-worthy customers of Korean descent. According to Leeds and LMS, Hanmi discriminated against them because Leeds is Caucasian and born in the United States. The second cause of action alleges that Hanmi's preferential treatment of customers of Korean descent in violation of the Unruh Act constitutes an unfair business practice.

Because of Hanmi's alleged illegal discrimination, LMS went out of business and Leeds suffered a nervous breakdown and was forced to file for personal bankruptcy in January 2014. The pleading also alleges that Leeds and LMS did not have reason to suspect that Hanmi's illegal discrimination was the cause of their damages until August 2017, when they consulted with an attorney.

Hanmi demurred to both causes of action on various grounds including, as relevant here, that the Unruh Act claim was time-barred. The bank contended that this claim accrued no later than January 2014, when Leeds filed for bankruptcy due to Hanmi's failure to provide LMS with the promised increase in its line of credit. Because the Unruh Act claim was subject to the two-year limitations period in Code of Civil Procedure¹ section 335.1, Leeds and LMS did not file their lawsuit until November 2017, and the pleading lacks sufficient delayed discovery allegations to overcome the statute of limitations, Hanmi argued its demurrer should be sustained without leave to amend.

In their opposition to the demurrer, Leeds and LMS acknowledged that Hanmi informed Leeds, between 2008 and 2010, that it could not provide LMS with the promised credit line

¹ Undesignated statutory references are to the Code of Civil Procedure.

due to regulatory oversight and controls. They also did not dispute the bank's contention that the Unruh Act claim was subject to a two-year statute of limitations. Instead, Leeds and LMS argued that the statute of limitations did not begin to run until August 2017, when Leeds consulted with an attorney who had some familiarity with banking discrimination.

The court sustained the demurrer without leave to amend on several grounds and entered a judgment of dismissal in favor of Hanmi. Leeds filed a timely notice of appeal.²

DISCUSSION

Leeds contends the court erred in sustaining the bank's demurrer to his Unruh Act claim without leave to amend.³ He argues the statute of limitations for this claim was not time-barred under the delayed discovery rule. Leeds also contends he has standing to bring an Unruh Act claim and he alleged sufficient facts to state a cause of action. Because we hold that the court properly sustained the demurrer on timeliness grounds, we do not reach Leeds's other arguments.

1. Standard of Review

“When reviewing a judgment dismissing a complaint after the granting of a demurrer without leave to amend, courts must assume the truth of the complaint's properly pleaded or implied factual allegations. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

² In January 2019, this court dismissed LMS's appeal. This court also denied LMS's subsequent motion to recall the remittitur and to reinstate the appeal.

³ Leeds does not challenge the court's ruling that his unfair business practices claim failed because it was derivative of the Unruh Act claim.

Courts must also consider judicially noticed matters. (*Ibid.*) In addition, we give the complaint a reasonable interpretation, and read it in context. (*Ibid.*) If the trial court has sustained the demurrer, we determine whether the complaint states facts sufficient to state a cause of action. If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. (*Ibid.*) If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. (*Ibid.*) The plaintiff has the burden of proving that an amendment would cure the defect. (*Ibid.*)” (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

“In light of these principles, the difficulties in demurring on statute of limitations grounds are clear: ‘(1) trial and appellate courts treat the demurrer as admitting all material facts properly pleaded and (2) resolution of the statute of limitations issue can involve questions of fact. Furthermore, when the relevant facts are not clear such that the cause of action might be, but is not necessarily, time-barred, the demurrer will be overruled. [Citation.] Thus, for a demurrer based on the statute of limitations to be sustained, the untimeliness of the lawsuit must clearly and affirmatively appear on the face of the complaint and matters judicially noticed. [Citation.]’ [Citations.]” (*Austin v. Medicis* (2018) 21 Cal.App.5th 577, 585 (*Austin*).)

2. Statute of Limitations

Hanmi contends that the first cause of action for violation of the Unruh Act is subject to a two-year statute of limitations.

(§ 335.1; see also *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 754–760.) Leeds agrees.⁴

3. Accrual and the Discovery Rule

A “ ‘statute of limitations does not begin to run until the cause of action accrues, that is, “ ‘until the party owning it is entitled to begin and prosecute an action thereon.’ ” [Citation.] [Citation.] Thus, to determine when the statutes of limitations ended, we must first address when they began.” (*Austin, supra*, 21 Cal.App.5th at pp. 587–588.) “Generally speaking, a cause of action accrues at ‘the time when the cause of action is complete with all of its elements.’ [Citations.]” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806–807 (*Fox*).

“An important exception to the general rule of accrual is the ‘discovery rule,’ which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. [Citations.]” (*Fox, supra*, 35 Cal.4th at p. 807.) “A plaintiff has reason to discover a cause of action when he or she ‘has reason at least to suspect a factual basis for its elements.’ [Citations.] Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period. [Citations.]” (*Ibid.*) “In other words, plaintiffs are required to conduct a reasonable investigation after becoming

⁴ Apparently, however, courts are divided as to which statute of limitations governs a claim under the Unruh Act: the two-year limitations period for personal injuries (§ 335.1) or the three-year limitations period for a liability created by statute (§ 338, subd. (a)). (See *Semler v. General Electric Capital Corp.* (2011) 196 Cal.App.4th 1380, 1387.) It makes no difference here because Leeds filed the lawsuit more than three years after his cause of action accrued.

aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation.” (*Id.* at p. 808.)

“[T]o rely on the discovery rule for delayed accrual of a cause of action, ‘[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.’ [Citation.] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to ‘show diligence’; ‘conclusory allegations will not withstand demurrer.’ [Citation.]” (*Fox, supra*, 35 Cal.4th at p. 808.)

While belated discovery is usually a question of fact, it may be decided as a matter of law when reasonable minds cannot differ. (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1320.) “Thus, when an appeal is taken from a judgment of dismissal following the sustention of a demurrer, ‘the issue is whether the trial court could determine as a matter of law that failure to discover was due to failure to investigate or to act without diligence.’ [Citation.]” (*Ibid.*)

4. The Unruh Act claim is untimely.

Hanmi argues that Leeds’s Unruh Act cause of action accrued no later than January 2014, when the bank’s refusal to increase LMS’s line of credit caused the company to fail and Leeds to file for personal bankruptcy. As he did not file this action until November 30, 2017, almost four years later, Leeds’s claim is time-barred.

Leeds argues that his lawsuit was timely under the discovery rule. Specifically, he asserts that he did not know, and

had no way to learn, that he had been wronged until August 2017, when he consulted with an attorney who informed him that Hanmi did not increase the promised line of credit because the bank discriminated in favor of its Korean customers and customers of Korean descent. But that issue is irrelevant. For purposes of starting, or tolling, the running of the statute of limitations, the question is not when Leeds discovered that he may have a *legal* claim for recovery against the bank based on illegal discrimination. It is the discovery of facts, not their legal significance, that starts the running of the statute of limitations. (See *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1113; see also *Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 898 [“It is irrelevant that the plaintiff is ignorant of his legal remedy or the legal theories underlying his cause of action.”].)

Based on the allegations in the operative pleading, Leeds knew by January 2014 that Hanmi had reneged on its promise to increase LMS’s line of credit, and that Leeds and LMS had been harmed by the bank’s broken promise. As such, he was required to conduct a reasonable investigation of all potential causes of that injury. (*Fox, supra*, 35 Cal.4th at pp. 808–809.) And to adequately allege facts supporting a theory of delayed discovery, Leeds was required to plead that, despite diligent investigation of the circumstances of the injury, he “could not have reasonably discovered facts supporting the cause of action within the applicable statute of limitations period.” (*Id.* at p. 809.) Here, the operative pleading does not allege what specific efforts, if any, Leeds made before August 2017 to discover the potential causes of his injury, or why he waited until August 2017 to consult with an attorney. Accordingly, Leeds did not meet his burden under the delayed discovery rule.

5. The court properly sustained the demurrer without leave to amend.

Leeds's Unruh Act cause of action accrued no later than January 2014, and thus, the lawsuit filed in November 2017 was untimely. Therefore, the court properly sustained the demurrer without leave to amend on timeliness grounds. As Leeds has not identified any way in which another opportunity to amend his complaint would cure this problem, the court did not abuse its discretion by denying leave to amend.

DISPOSITION

The judgment is affirmed. Hanmi Bank shall recover its costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.